

Remarks

Reconsideration of this Application is respectfully requested.

Based on the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

Rejection under 35 U.S.C. § 103(a)

The rejection of claims 1, 2, and 4 under 35 U.S.C. § 103(a) as allegedly being obvious over Ehrenfreund *et al.*, WO 03/080628 ("Ehrenfreund") is respectfully traversed.

Applicants respectfully submit that substituting an iodine or chlorine substituent in place of the difluoromethyl group of Ehrenfreund would not have been *prima facie* obvious because, *inter alia*, a person of ordinary skill in the art would not have expected that such compounds would be useful as fungicides given the unpredictability in this art.

The Office has cited one compound in Table A among at least hundreds of particularly preferred compounds listed in Tables 1 to 16 (Table A represents Table 1 when A is 1 and Table 2 when A is 2). Furthermore, none of the 82 compounds listed in Table A are substituted by a halogen at "R⁹" of the heterocyclic ring. Ehrenfreund, therefore, actually teaches away from the compounds of the present invention.

Ehrenfreund provides no rationale to select a compound of the presently claimed invention out of the hundreds of possible compounds and the office has impermissably used hindsight to modify one compound disclosed in Ehrenfreund to arrive at the present invention. According to the M.P.E.P. at 2141:

The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR* noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Court quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006), stated that "[R]ejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."

Applicants respectfully submit that the Examiner has failed to articulate "some rational underpinning to support the legal conclusion of obviousness."

The Office indicated that "[a]bsent any showing of unusual and/or unexpected results over Applicant's particular compound, the art obtains the same silylated carboxamide structure." Applicants consequently submit the attached Declaration under 37 C.F.R. § 1.132 executed by Dr. Ulrike Wachendorff-Neumann ("Declaration"), an inventor of the present application, presenting unexpected results. Example 2 of the Declaration illustrates that the iodo-substituted compound of the current application is significantly more efficacious than the difluoromethyl-substituted compound of Ehrenfreund (A.45). Specifically, at the same rate of application, the iodo-substituted compound is 83% effective, while the difluoromethyl-substituted compound of Ehrenfreund (A.45) is only 50% effective.

Therefore, the Office's case of *prima facie* obviousness is effectively rendered moot. Applicants respectfully request that the rejection be withdrawn and that the application be allowed.

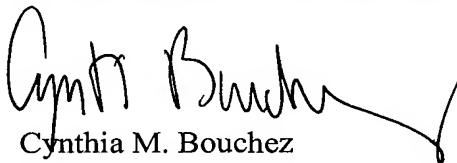
Conclusion

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.

A handwritten signature in black ink, appearing to read 'Cynthia M. Bouchez', with a long horizontal flourish extending to the right.

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